IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 2923 OF 2003.
IN
SUIT NO. 3079 OF 2003

Sony Kabushiki Kaisha (also) Trading as Sony Corporation.] .. Plaintiffs

Versus

M/s. Aashish Electronic & Ors.] .. Defendants

Mr.Ashish Prasad for the plaintiffs.

Mr.Pankaj S. Shah for the defendant Nos.1 to 3.

CORAM: ANOOP V. MOHTA, J.

DATED: 16TH SEPTEMBER, 2005

P.C. :

1. Heard the learned counsel appearing for the parties. The suit dated 20th August, 2003, is basically for injunction and for an appropriate order of restrainment against the defendants from using the trademark "SONY" by naming and spelling it "SONNY" or any word deceptively similar thereto in connection with its business as it would tantamount to infringement and/or passing off. The cause of action, as per the plaintiffs, arose in January 2001, when they first learnt about the defendants activities of using "SONNY"

on their electric good like AC Adapter and offering the same for the sale in the market. Inspite of due notice, as defendants failed to desist themselves from using the said word, the present suit has been filed on 29th September, 2003. A Notice of Motion has been taken out by plaintiffs for urgent ad-interim relief.

2. There is undisputed position of facts that plaintiffs have been selling this product under the trademark "SONY" in India since the year 1983 to 1993, even though at that time, the main company of the plaintiffs was at Japan. The registration of the mark in 193 countries of the world and plaintiffs' world wide sales figures of SONY branded goods in the last few years are also reflected in paragraph 4 which is for the period 1975 upto 2001.

3. The plaintiffs have a wholly owned Indian subsidiary by the name of SONY INDIA LIMITED which is using the trade mark SONY on all its products and is doing substantial business. The sales effected by Sony India Limited for the years 1995 to 2001 of goods bearing the trade mark SONY has been reflected in the Plaint.

4. It was also averred that they have entered

into the entertainment Industry viz. "SONY ENTERTAINMENT" Channel which is available in India and being is watched by millions of viewers in this country. Therefore, SONY is the corporate name of plaintiffs and both the names SONY and the trade mark SONY are associated in the minds of the people in India with high quality goods of the plaintiffs. The advertisement of SONY goods in India and abroad in magazines and other media had extensive circulation in this country.

5. As averred, in a latest survey in the Economic Times dated 23rd December, 1997, "Brand Value - An Economic Times - IMRB Survey of Indian Brands", SONY has been categorised as the third topmost brand by the general consumer in India. In the book "Famous and Well Known Marks" published in 1997, it has been mentioned that although there is no precise definition for famous and well known marks, the trade mark "SONY" would probably qualify as such in India.

6. In this background, the use of the said mark "SONNY" by the defendants in relation to their business of selling AC adapters and battery chargers definitely creates a confusion. It is a clear case of infringement of their trademark. This definitely creates confusion in the mind of the people at large as if it is the

product of the plaintiff. Such goods in the market, therefore, damage the reputation, as well as, injure the business.

7. Considering the above background, by an order dated 14th October, 2003, after hearing the parties, ad-interim relief in terms of prayer clauses (a) and (b) has rightly been granted, after hearing the defendants 1 to 3. The prayer clauses (a) and (b) are as follows:

> "(a) That pending the hearing and final disposal of this suit the Court Receiver, High Court, Bombay or such other fit and proper person as this Hon'ble Court thinks fit, be appointed Receiver with all powers under Order XL Rule 1 and Order XXXIX Rule 7 of the Code of Civil Procedure, 1908 of products bearing the impugned mark "SONY" and of all blocks, moulds, goods, labels, cartons, strips, advertising material, and other literature, material bearing the impugned trade mark, product catalogue, printing and packaging material pertaining thereto, including all other things which are or may be intended to be used in the manufacture, advertisement of and in connection with the products hereto with all powers under Order 40 Rule 1 of the Civil Procedure Code 1908 including power to take physical possession thereof and with police help if necessary.
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> (b) That pending the hearing and final disposal of the suit the Defendant, by himself, his servants, dealers and agents be restrained by a temporary order and injunction of this Hon'ble Court from using the trade mark SONY or any other word/name containing the word SONY or any word deceptively similar to the trade

> mark SONY or from using the word SONY or any word deceptively similar thereto in connection with their business as would tantamount to passing off."

8. The learned counsel appearing for defendants made a statement that this order has been fully complied with. The said order dated 14th October, 2003, has not been carried in Appeal and no applications have been moved for vacation of this order. There is no additional Affidavit filed on the record by the defendants. There are no defences as such raised in the matter as crystallized in the Book "Trade Mark, Passing Off & Franchising" [First Edition 2004], which are as follows:

(a) that the plaintiff has no title to the registered mark;

(b) that of registration of the mark is not valid;

(c) the use of the mark by the defendant is not infringement;

(d) right to use the mark due to concurrent registration and also honest concurrent use by the defendant;

(e) that the use complained of is prior and hence

protected;

(f) that the use complained of is protected as bona fide;

(g) that the plaintiff is not entitled to the relief sought by reason of estoppel such as acquiescence, abandonment etc;

(h) the use complained of is protected by section 35;

(i) that the exclusive rights claimed by the plaintiff have ceased to exist on account of circumstances contemplated in section 30.

(j) defence regarding damages under section 135(3);"

Even otherwise, it is a matter of detail deliberation during the trial.

9. Considering the fact that a *prima facie* case has been made out by plaintiffs and as all the ingredients of grant of injunction have been made out by the plaintiffs. The balance of convenience is in favour of plaintiffs. The selling of goods by the defendants in the name of "SONNY" will create confusion and shall

cause irreparable loss and injury to the well-known and extensive market of all the products of the plaintiffs.

10. Taking all this into account, even though there is a Written Statement filed by defendants, still at this stage, I am convinced that this is a case where the ad-interim relief which has been granted needs confirmation. I am inclined to confirm the ad-interim order in terms of prayer clauses (a) and (b). The Notice of Motion is accordingly disposed of.

[ANOOP V. MOHTA, J.]

[srpasha@hc]